/

REMARKS

Review and reconsideration of the non-final Office Action mailed March 9, 2009 (the "Office Action"), is respectfully requested in view of the following remarks. Claims 1-31 remain pending. No claims have been amended in this response. In the Office Action, claims 1-16, 18, 20, 22-26, 30 and 31 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,336,580 to Allen, et al. Additionally, claim 27 was rejected under 35 U.S.C. §102(e) as being anticipated by Allen. Finally, claims 17, 19, 21, 28 and 29 were rejected under 35 U.S.C. §103(a) as being unpatentable over Allen in view of U.S. Patent No. 6,386,407 to Erickson, et al. (Erickson).

Applicant notes that at least each of independent claims 1, 2 and 4 in the present application have an effective filing date of December 31, 2001. Support for these claims can be found in FIGs. 1, 17 and 18 and on page 23, line 22 – page 24, line 12 of the parent application, serial no. 10/032,122, now U.S. Patent No. 6,772,927. Moreover, the subject matter of "the cradle having at least two spaced apart and aligned through passages" can be seen in FIGs. 16-18 and page 23, line 16 of the parent application.

Claim Rejections Under 35 U.S.C. §102(b)

Independent Claims 1, 2 and 4

Independent claim 1 recites the limitation that the cradle is operator reciprocal on the elongate arm in the non-transporting configuration thereby facilitating variable longitudinal positioning of said cradle by the operator upon said arm. This claim also recites that the cradle has an increased resistance to longitudinal reciprocation on the elongate arm in the bicycle transporting configuration in comparison to the non-transporting configuration and thereby is effectively longitudinally fixed on the elongate arm in the bicycle transporting configuration. Independent claim 2 recites similar subject matter.

Further, independent claim 4 recites the limitation that the bicycle cradle is operator configurable between a bicycle transporting configuration in which the cradle is tight-fitting upon the arm and a non-transporting configuration in which the cradle is comparably loose-fitting upon the arm. Claim 4 goes on to recite the limitation of reconfiguring the bicycle cradle

to the non-transporting configuration after transporting use and thereby limiting strain induced, cold-flow creep in the bicycle cradle that results in a reduction of tightness of fit of the cradle upon the arm to periods when the bicycle transporting configuration is assumed.

Allen fails to teach such subject matter. In particular, Allen merely explains that arm portions (30a) may be provided with cradle structures (32) configured to support a top tube and/or other portions of a bicycle and that the cradle structures (32) are typically movably connected to arm portions (30a) and may be positioned in any desired location along the length of the arm portions (30a) (see col. 3, lines 14-23). Allen provides absolutely no detail as to any structure for adjusting the fit between the cradle structures (32) to the arm portions (30a). In fact, Allen simply shows a passageway on the cradle (32) for receiving the arm portion (30a) (see FIGs. 1 and 2). Thus, Allen does not show how the resistance of the cradle (32) to longitudinal reciprocation may be adjusted in view of different transportation modes, particularly when such resistance is increased to the point that the cradle is effectively fixed to the elongated arm or decreased to a level that limits strain induced, cold-flow creep in the bicycle cradle.

In the Office Action, the Examiner appears to argue that the straps that are part of the cradle (32) of Allen serve as a means for adjusting the resistance as recited in the above claims (see page 3 of the Office Action). Such a strap, however, only engages the bicycle to which it is secured and never comes into contact with the arm portions (30a). As such, one skilled in the art would understand that the operation of the strap in Allen will not affect the resistance of the cradle (32) to operator reciprocation and that the resistance of the cradle (32) to operator movement along the arm portions (30a) remains constant while the cradle (32) is attached to the arm portion (30a).

Dependent Claim 10

Dependent claim 10 recites the limitation that at least one of the series of apertures is sufficiently misaligned in the transporting configuration to establish a binding effect between the cradle and the elongate arm and thereby effect the longitudinal fixation of the cradle on the elongate arm in the bicycle transporting configuration. Similar to the discussion above, Allen does not teach such subject matter. While the cradle (32) of Allen does seem to show a pair of rings for receiving the arm portion (30a), there is no discussion concerning the misalignment of

/

these rings. The Examiner once again appears to refer to the strap of the cradle (32) of Allen to reject this claim (see page 7 of the Office Action); however, Allen does not explain how operation of this strap could affect the alignment of the rings of the cradle (32).

Dependent Claim 12

Dependent claim 12 recites the limitation that one of the cradle portions is a binding assembly that more forcefully abuts the elongate arm in the bicycle transporting configuration that in the non-transporting configuration. In rejecting this claim, the Examiner appears to argue that the rings of the cradle (32) more forcefully abut the arm portion (30a) based on the operation of the strap of the cradle (32) (see page 8 of the Office Action). Allen, however, does not show how operation of such a strap can affect the force with which the rings of the cradle (32) in Allen abut the arm portion (30a), as there are no structures or physical relationships between the rings and strap in place to cause such a result.

Claim Rejections Under 35 U.S.C. §102(e)

Claim 27

Claim 27 recites the limitation that the load carrying member has an insert portion and a load carrying portion in which the insert portion is twistably positioned in the socket, thereby enabling a twisting action therein that effects a transition between a load carrying orientation and a twist-adjusted orientation. It is physically impossible to twist the curve bar (30) of Allen between different orientations with respect to other portions of the vehicle load carrier (10), as the bar (30) is *welded* to the coupler tube (40) (see col. 5, lines 19-23).

_____/

Conclusion

For at least the reasons set forth above, the independent claims are believed to be allowable. In addition, the dependent claims are believed to be allowable due to their dependence on an allowable base claim and for further features recited therein. The application is believed to be in condition for immediate allowance. If any issues remain outstanding, Applicant invites the Examiner to call the undersigned 713-571-3400 if it is believed that a telephone interview would expedite the prosecution of the application to an allowance.

The amendments presented herein have been made solely to expedite prosecution of the instant application to allowance and should not be construed as an indication of Applicants' agreement with or acquiescence to the Examiner's position. Accordingly, Applicants expressly maintain the right to pursue broader subject matter through subsequent amendments, continuation or divisional applications, reexamination or reissue proceedings, and all other available means.

Novak Druce + Quigg LLP
1000 Louisiana, Fifty-Third Floor
Houston, Texas 77002
(713) 571-3400
(713) 456-2836 (fax)
tracy.druce@novakdruce.com

Respectfully submitted,

/Tracy W. Druce/

Tracy W. Druce, Esq.
Reg. No. 35,493

Docket No. 7298.125.NPUS00